SBCivil Writ Petition No.2692/2005

Bhopal Singh Nahar
Vs.
State of Rajasthan & Anr.

Date of Order :: 15th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sundeep Bhandawat, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

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The petitioner while discharging duties of assessing authority under Rajasthan Land and Building Tax Act, 1964 (hereinafter referred to as "the Act of 1964") assessed land and building tax under an order dated 26.3.1999 pertaining to the land and building of M/s Dimple Estate Private Ltd., Udaipur. At the first instance the Director, Urban Land-cum-Building Tax, Rajasthan, by communication dated 19.12.2001 instructed the petitioner to submit an explanation for causing loss of a sum of Rs.2.29 lacs by making a undervalued assessment of tax by the order dated 17.3.1999. The petitioner in response to the communication dated 19.12.2001 submitted a reply demanding certain documents. The respondents then served a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 upon the petitioner alleging therein that the petitioner caused a loss of revenue i.e. of Rs.2.29 lacs to the State Government by making a wrong evaluation of a commercial plot of land pertaining to Hotel Dimple International.

Being aggrieved by initiation of disciplinary proceedings under the memorandum referred above this petition for writ is preferred to quash the notice dated 19.12.2001 as well as memorandum referred above dated 1.1.2005.

An important fact mentioned in the writ petition and admitted by the respondents is that while exercising powers under Section 15-B of the Act of 1964 the assessment of M/s Dimple Estate Private Ltd. was reopened and fresh assessment orders were passed on 25.6.2001 and 22.9.2001. The orders passed by reopening of assessment under Section 15-B of the Act of 1964 came to be reversed in a revision petition decided by Divisional Commissioner, Udaipur by order dated 13.1.2003 exercising powers under Section 19 of the Act of 1964. The Commissioner, Udaipur affirmed the order passed by the petitioner in capacity of assessing authority on 26.3.1999.

Heard counsel for the parties.

The contention of counsel for the petitioner is that the petitioner while working as assessing authority was exercising quasi judicial powers and any error while exercising quasi judicial powers if is not an out come of malafides or of corrupt practice, then the same does not constitute any misconduct. To

support the contention reliance is placed upon the judgment of Hon'ble Supreme Court in the case of Zunjarrao Bhikaji Nagarkar vs. Union of India & Ors., reported in AIR 1999 SC 2881, holding as under:-

> "43.If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

In the instant matter also there is no allegation upon the petitioner that he made an undervalued assessment as a corrupt practice or with

some extraneous influence or with an intention to extend unauthorised benefit to M/s Dimple Estate Private Ltd. The petitioner at the most could be termed to be guilty of committing a judicial error, such an error does not constitute a misconduct under Rajasthan Civil Services (Conduct) Rules, 1971. Such type of errors are open for judicial review. In the case in hand the order passed by the petitioner as assessing authority has already been reviewed and stood affirmed by revisional authority, therefore, the allegation for causing loss to the State Government is also not sustainable.

In view of whatever stated above this petition for writ deserves acceptance. The same, therefore, is allowed. The disciplinary proceedings initiated against the petitioner under the memorandum dated 1.1.2005 (Anx.7) stands quashed.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.